

STATE OF MICHIGAN
COURT OF APPEALS

MARVIN MARSHALL and CHRISTINE
MARSHALL,

UNPUBLISHED
May 15, 2012

Plaintiff-Appellees,

v

BOYNE USA, INC.,

No. 301725
Charlevoix Circuit Court
LC No. 10-091822-NF

Defendant-Appellant.

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

HOEKSTRA, P.J., (*concurring*).

Although I join with the majority in reversing, I write separately because my reason for reversing differs from that of the majority.

In *Anderson v Pine Knob Ski Resort, Inc.*, 469 Mich 20, 26; 664 NW2d 756 (2003), the Supreme Court concluded that if a hazard inheres in the sport of skiing, it is covered by the Michigan's Ski Area Safety Act (SASA), MCL 408.321 *et seq.*, unless it is unnecessary or not obvious.

Here, it is undisputed that the half pipe, like the timing booth in *Anderson*, inheres to the sport of skiing and is a necessary installation in a terrain park. But unlike the timing booth in *Anderson*, plaintiff, in my opinion, makes an arguable claim that the half pipe was not obvious to persons skiing cross-hill. It appears that this argument persuaded the trial court to deny defendant's motion for summary judgment.

But even assuming a fact question exists regarding whether the half pipe was not obvious, plaintiff admitted to actual knowledge of the location of the half pipe from having observed it earlier that same day while skiing. When skiing, a plaintiff is required by the SASA to "maintain reasonable control of his speed and *course* at all times," MCL 408.342 (emphasis added). I would conclude that the obligation to reasonably control one's course includes the expectation that a plaintiff will avoid known hazards. Here, plaintiff's failure to reasonably control his course of travel after executing a jump resulted in him coming up to and falling into the half pipe that he admittedly knew was located in that area of the terrain pipe. For that reason,

I would reverse and remand.

/s/ Joel P. Hoekstra